

---

No. 11419

United States  
Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

---

PAUL JOHN HUNT,

*Appellant,*

*vs.*

SECURITIES AND EXCHANGE  
COMMISSION,

*Appellee.*

---

UPON APPEAL FROM THE DISTRICT  
COURT OF THE UNITED STATES FOR THE  
WESTERN DISTRICT OF WASHINGTON  
NORTHERN DIVISION

---

HONORABLE LLOYD L. BLACK, *Judge*

---

OPENING BRIEF OF APPELLANT

---

LEWIE WILLIAMS

FRED'K R. BURCH

*Attorneys for Appellant*

Address:

608 Fourth and Cherry Bldg.,  
Seattle 4, Washington

---

FILED

NOV 21 1946

PAUL P. O'BRIEN,



## SUBJECT INDEX

	<i>Page</i>
Jurisdiction of the Court.....	1
Statement of the Case.....	3
Questions Involved .....	8
Argument of the Case.....	10

---

## TABLE OF CASES

	<i>Page</i>
Am. Jur., Vol. 11, page 16, sec. 14.....	17
Am. Jur., Vol. 11, page 17, sec. 15.....	18
Am. Jur., Vol. 11, page 19, sec. 18.....	18
<i>Bridge Co. vs. Kentucky</i> , 154 U. S. 204, 38 L. ed. 962.....	18
C. J. Vol. 12, page 12, sec. 10.....	19
C. J. S. Vol. 15, page 431, sec. 88.....	19
Federal Constitution, Tenth Amendment.....	16
Federal Constitution, Article 1, sec. 8, sub. sec. 3 .....	16
Judicial Code, sec. 128.....	2
Judicial Code, sections 128-240.....	2
<i>National Labor Relations Bd. vs. Jones et al</i> , 301 U. S. 1, 81 L. ed. 893.....	17

Securities Act of 1933, sec. 22(a).....	2
<i>Schechter P. Corp. vs. U. S.</i> , 295 U. S. 495, 97 A. L. R. 947.....	18
<i>Sec. and Ex. Com. vs. Crude Oil</i> , 93 Fed. 2d 844, 17 Fed Supp. 164.....	19
U. S. C. A., Vol. 28, sec. 41.....	2
U. S. C. A., Vol. 28, sec. 225(e).....	2
U S. C. Title 15, sec. 77(r).....	11
U. S. C. Title 15, sec. 77c(a)(11).....	20

United States  
Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

---

PAUL JOHN HUNT,

*Appellant,*

*vs.*

SECURITIES AND EXCHANGE  
COMMISSION,

*Appellee.*

---

UPON APPEAL FROM THE DISTRICT  
COURT OF THE UNITED STATES FOR THE  
WESTERN DISTRICT OF WASHINGTON  
NORTHERN DIVISION

---

HONORABLE LLOYD L. BLACK, *Judge*

---

OPENING BRIEF OF APPELLANT

---

JURISDICTION OF THE COURT

This is an appeal from an order of the District Court of the United States for the Western District of Washington, Northern Division, in cause number 1560, wherein, upon a hearing, the court found appellant guilty of contempt of court on the grounds of infraction of certain terms of an injunctive order, issued in cause number 1480, and levied a fine therefor, and that appellant stand committed.



The Federal Courts have jurisdiction to determine issues arising out of the construction of Federal statutes (28 U. S. C. A. Sec. 41; **Judicial Code**, Sec. 24, Paragraph 8).

The Circuit Court of Appeals has jurisdiction to reverse judgments of the District Court (28 U. S. C. A., Sec. 225, (e) **Judicial Code**, Sec. 128).

Judisdiction to grant injunctions in matters arising in interstate commerce and to punish for an infraction thereof is specifically granted to the District Courts by Section 22 (a) of the Securities Act of 1933, which likewise authorizes review by this court pursuant to Sections 128 and 240 of the **Judicial Code**, as amended. Said section reads as follows:

“Sec. 22 (a) The district courts of the United States \* \* \* shall have jurisdiction of offenses and violations under this title and under the rules and regulations promulgated by the Commission in respect thereto. \* \* \* Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the **Judicial Code**, as amended (U. S. C. A., title 28, secs. 225 and 347.)”

It is conceded by all parties concerned that the United States District Courts have jurisdiction of all matters appertaining to the execution of the

terms provided in what is known as the Securities Act of 1933 as applied to interstate commerce, and that the Circuit Courts of Appeal have appellate jurisdiction thereof.

It is also conceded by all parties concerned that the said District Courts have jurisdiction to issue injunctions in said matters and to punish for infractions thereof and that the Circuit Courts of Appeal have appellate jurisdiction therein.

---

## STATEMENT OF THE CASE

The appellant herein secured authority from the Director of Licenses of the State of Washington in October, 1939, to sell securities in said State and to use the mails in so doing and that said license was and is in full force and effect at all times herein mentioned. Printed record, Page 41.

Acting by and under the rights thus granted, appellant sold and delivered securities and used the mail in the state of Washington and to residents of said state only, save and except that two or three sales were made that could be, and were, construed by appellee to be sales in interstate commerce and the lower court so held.

Appellant, believing that said sales were within his rights, did not and had no desire to apply to the Security Exchange Commission for a registration statement as he had no desire nor intent to engage in interstate commerce.

On February 18, 1946, appellant was served with a complaint charging him with having made sales and using the mail in interstate commerce.

By stipulation appellant admitted having made said sales and using the mail without a registration statement. The number of that action is 1480.

Thereupon, and as of the same date, the Court issued an injunctive order reading as follows: Printed record Page 6.

“IN THE UNITED STATES DISTRICT  
COURT FOR THE WESTERN DISTRICT OF  
WASHINGTON NORTHERN DIVISION

Civil Action, File No. 1480

SECURITIES AND EX- CHANGE COMMISSION,	} DECREE OF PERMANENT INJUNCTION
<i>Plaintiff,</i>	
<i>v.</i>	
PAUL JOHN HUNT,	}
<i>Defendant.</i>	

This cause coming on to be heard on the 18th day of February, 1946, on the verified complaint filed



herein, and Paul John Hunt, defendant, not contesting the allegations contained therein, and upon stipulation of the parties hereto, on the motion of the Securities and Exchange Commission, plaintiff, and the Court being fully advised in the premises,

IT IS HEREBY ADJUDGED, ORDERED AND DECREED that the defendant, Paul John Hunt, his agents, servants, employees, attorneys and assigns, and each of them, be enjoined from directly or indirectly:

(a) making use of any means or instruments of transportation or communication in interstate commerce, or of the mails, to sell investment contracts, certificates of interest or participation in a profit-sharing agreement, fractional undivided interests in oil or gas rights, or interests or instruments commonly known as securities, arising out of or in connection with the sale of assignments of oil and gas leases on land located in Yakima or Benton counties, Washington, or any other securities, through the use or medium of any prospectus or otherwise;

(b) carrying such securities or causing them to be carried through the mails or in interstate commerce by any means or instruments of transportation, for the purpose of sale or for delivery after sale;

unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities; provided that the foregoing shall not apply to any security or transaction which is exempt from the provisions of Section 5 of the

Securities Act of 1933, as amended.

Done in open Court this 18th day of February, 1946.

(Signed) LLOYD L. BLACK,  
*United States District Judge*''

On June 4, 1946, appellant was served with a show cause order to appear before the Court on June 11, 1946.

This show cause order took the number of 1560 and was continued to August 12th, 1946, at which date the Court issued the Order and Judgment from which this appeal is taken.

It reads as follows: Printed record, page 30.

“IN THE UNITED STATES DISTRICT  
COURT FOR THE WESTERN DISTRICT OF  
WASHINGTON NORTHERN DIVISION  
IN THE MATTER OF } No. 1560  
PAUL JOHN HUNT } ORDER  
AND JUDGMENT

This matter having come on before this Court for hearing the 11th day of June, 1946, on application of the Securities and Exchange Commission, and James E. Newton having been appointed and directed to prosecute the defendant Paul John Hunt on behalf of this Court, and it appearing to the Court from the stipulation on file in the matter and the evidence adduced at that time that Paul John Hunt did violate the decree of permanent injunction

entered by this Court on February 18, 1946, in the matter of Securities and Exchange Commission, Plaintiff, v. Paul John Hunt, Defendant, Civil Action File No. 1480, as set forth in the application of Securities and Exchange Commission, the defendant Paul John Hunt with actual knowledge of the contents of said decree of injunction and of all the proceedings in said cause, Civil Action No. 1480, having since the entry of said decree of injunction on February 18, 1946, sold securities in the State of Washington and to residents of said state only, which securities are identical in every respect and part of the same issue, offering, general plan of financing and for the same purpose as those securities sold prior to said decree to the residents of Washington, Idaho, and California, the sale of which securities said decree restrained and enjoined, and the mails having been used in the sale and delivery after sale of such securities by the defendant Paul John Hunt since the entry of said decree on February 18, 1946, no registration statement being in effect with the Securities and Exchange Commission and no exemption from the provisions of Section 5 of the Securities Act of 1933, as amended, being available with respect to such securities.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Paul John Hunt be and is hereby held in contempt of this Court for violation of the decree of permanent injunction entered against him on February 18, 1946, in the matter of Securities and Exchange Commission v. Paul John Hunt, as charged in the application of Securities and Exchange Commission on file herein; and,

**IT IS FURTHER ORDERED** that the contemnor Hunt pay a fine to the United States of America



in the sum of \$400.00 and shall stand committed until said fine is paid.

Done in open Court this 12th day of August, 1946.

(Signed) LLOYD L. BLACK

*United States District Judge*''

In the preface to the above Order and Judgment the Court states the fact to be:

“The defendant Paul John Hunt with actual knowledge of the contents of said decree of injunction and of all the proceedings in said cause, Civil Action No. 1480, having since the entry of said decree of injunction on February 18, 1946, sold securities in the State of Washington and to residents of said state only.” Printed record, Page 31.

In further substantiation of this fact we quote from the stipulation of the parties and their attorneys:

“Since the decree of injunction against Paul John Hunt entered by this Court on February 18, 1946, however, the sale of such securities has been restricted exclusively to persons resident in the State of Washington.”

Printed record, Page 20.

---

## QUESTIONS INVOLVED

1. Does the injunction issued in cause No. 1480 on February 18th, 1946, either in terms or implica-

tions, apply to intrastate business conducted under and by virtue of a license duly granted by the State?

2. Do the Federal Courts have a right to enjoin any privilege granted by a state in intrastate commerce unless said action is fraudulent and contrary to rules promulgated in interstate commerce and deleterious to the just application thereof?

3. Must any party who is duly authorized to carry on intrastate commerce within a State apply to the Securities and Exchange Commission for a "registration statement," and "a prospectus that meets the requirements of section 10 of the Securities Act of 1933?"

4. Does an inadvertent sale in interstate commerce made by one duly authorized to conduct an intrastate business clothe the Securities and Exchange Commission with any jurisdiction over intrastate business?

5. Does a sale in interstate commerce of any security which is a part of an issue sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or if a corporation, in-



incorporated by and doing business within, such State or Territory, make the entire issue of said securities subject to the exclusive jurisdiction of the Securities and Exchange Commission and thereby nullify the exemption provided in Sec. 3 (a) (11) of the Securities Act of 1933?

The lower court answered "Yes" to each of the foregoing questions and thereby erred in each instance.

---

## ARGUMENT OF THE CASE

Since October, 1939, appellant has conducted an intrastate business by sale and delivery of securities in the state of Washington, being duly authorized so to do by said state. Printed record, Page 41.

While so doing two or three sales were inadvertently made which could be construed as interstate commerce, and was so construed by the court and on February 18th, 1946, appellant was enjoined from making any more sales in interstate commerce.

Since the issuance of said injunction appellant has made no sales in interstate commerce but has

continued in intrastate commerce exclusively.

On the 12th day of August, 1946, the lower court, construing the doing of intrastate business to be an infraction of said injunction, found appellant guilty of contempt of court.

In adopting the view indicated by the lower court in answer to the five questions involved, the said court, while construing the terms of the Securities Act of 1933, was called upon to ignore one of the most important provisions of said Act which reads as follows:

“Sec. 18. Nothing in this title shall affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, over any security or any person.”  
U. S. C. Title 15, Sec. 77 (r.)

The court by ignoring said Sec. 18 and proceeding under a self constituted jurisdictional right, would cause anyone engaged in legitimate intrastate commerce to be held guilty of contempt of court unless he first, observe and obey the terms of the Security Act as applied to interstate commerce, second, apply to the Securities and Exchange Commission for a “registration statement” and a prospectus

that meets requirements of section 10 of the Securities Act of 1933, and third, must be able to determine beyond a doubt that every purchaser is a bona fide resident of the state and whether absence from the state is, or will be, temporary or the establishment of a foreign residence.

Failing in any one of these requirements he becomes, at once, subject to an injunctive order prohibiting him from conducting any further intrastate business no matter what the consequences may be to him or to his clientele who are thus called upon to be sacrificed.

This is a condition which neither Congress nor the Securities Commission ever intended to establish.

It is compatible with any reasonable intendment that anyone doing a legitimate intrastate business and who enters the interstate field, can and should be enjoined from so doing and the persistence in insisting upon such conduct is the only grounds for contempt.

In the present case an injunctive order was issued, not only enjoining appellant from continuing in interstate business but which appellee stoutly main-

tains prohibits the doing of intrastate business without qualifying to do interstate business.

The foregoing claim leads to a very unreasonable climax.

Aside from the legal aspect above presented and assuming, for the purpose of argument only, that the injunctive order issued in cause No. 1480 on February 18th, 1946, was controlling in all respects, a diagnosis of said injunctive order becomes necessary. Said order enjoins appellant:

1st, From: "Making use of any means or or instruments of transportation or communication in interstate commerce, or of the mails, to sell investment contracts, etc."

2nd, From: selling "any securities through the use or medium of any prospectus or otherwise."

3rd, From: Carrying such securities or causing them to be carried through the mails or in interstate commerce.

It will be noted that all these prohibited acts are aimed at transactions in interstate commerce. If



applied to intrastate commerce, it is by a very strained presumption; one leading to an occult conclusion.

For instance, in question number 1, "From making use of any means or instruments of transportation or communication in interstate commerce" is clear, but the expression "or of the mails" provides a very broad grounds for presumption and presumption only.

It does not state how, when, where or under what circumstances appellant can or cannot use the mails. Taken literally appellant cannot use the mails to send a letter to some dear friend congratulating him or her upon their birthday.

The only reasonable construction to be placed upon this condition is that appellant is enjoined from using any means or instruments of transportation or communication or of the mails in interstate commerce to sell, etc.

The same condition obtains in the matter of the use of any prospectus. It nowhere designates when, how, or where this prospectus may or may not be used and considering the question arises from a federal statute dealing with interstate commerce,



and with that alone, we cannot but conclude that the prohibition is addressed to the use of a prospectus in interstate commerce, and interstate commerce only.

In the case at bar appellant has been for several years engaged in a legitimate intrastate business and the Securities Exchange Commission, well knowing and conceding that it had no jurisdiction in the matter, never interfered. It was not till it became aware of a few sales which might be construed to be interstate sales that it sought, and was entitled to, an injunction from continuing to make interstate sales.

For some reason which does not appear upon the surface, yet seems to be quite controlling, the Commission concludes that this simple fact, these few sales in interstate commerce, no matter how inadvertent and unintentional they may be, clothes the Securities Exchange Commission with full and complete jurisdiction of both interstate and intrastate commerce, even to the extent of a complete nullification of all intrastate rules and regulations.

It will be noted that appellant is not charged with fraud in any instance. The only charge levied

against him is that he invaded the field of interstate commerce without first procuring a "registration" and a "prospectus" from the Securities Exchange Commission and that he used the "mails" in so doing. Hence, there being no fraud charged, appellee was compelled to assume that it could deny appellant the right to use the mails in intrastate commerce, or at all, fraud or no fraud. Such an assumption of dictatorial power is not permitted in the U. S. A.

The distinction between "interstate" and "intra-state" is clearly enunciated in the tenth amendment to the Federal Constitution:

"The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

The only power delegated to the United States in the matter of "regulating commerce" is contained in Article I, Sec. 8, Sub-section 3, of the Federal Constitution, which reads as follows:

"The congress shall have power,—To regulate commerce with foreeign nations and among the several states and with the Indian tribes."

Since the issuance of the injunction of February 18th, 1946, Appellant has in no way dealt with foreign nations nor among the several states, nor an Indian tribe, hence, is not in contempt of any order which Congress or the Securities Exchange Commission is authorized to promulgate.

“The power of Congress does not extend to the purely internal or intraterritorial commerce of the states.”

Vol. 11, Am. Jur., Page 16, Sec. 14.

“The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce among the several states and the internal concerns of a state. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system.”

National Labor Relations Bd. vs. Jones and L. Steel Corp., 301 U. S. 1, 81 L. ed. 893.

“The power of Congress must be considered in the light of our dual system of government and may not be extended to embrace effects upon interstate commerce so indirect and remote that to do so, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and would create a completely centralized government.



If the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of the state power."

Vol. 11 Am. Jur. Page 17, Sec. 15.

"If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the state over its domestic concerns would exist only by sufferance of the Federal Government. Indeed, on such a theory, even the development of the State's commercial facilities would be subject to Federal control."

Schechter Poultry Corp. vs. U. S., 295 U. S. 495, 79 L. ed. 1570. 97 A. L. R. 947.

"The power over commerce not delegated to the Federal Government by the constitution are reserved to the states. It is the rule—which is as well established as is the rule that the regulation of commerce with other nations, states, or the Indian tribes, belongs solely to Congress—that the states retain exclusive control over that commerce which is completely internal, which is carried on between one person and another in a state, and which does not extend to or affect other states. As to such commerce, the states have plenary power and Congress has no right to interfere."

Vol. 11 Am. Jur., Page 19, Sec. 18. Sec. C. and C.

Bridge Co. vs. Kentucky 154 U. S. 204, 38 L. ed. 962.

"A state has an inherent and reserved right to regulate local, domestic and internal commerce. The question whether a state statute is in violation of the commerce clause of the federal constitution

does not arise where it is sought to apply the statute to purely internal commerce, and, in such case, the decision of the interstate commerce commission, or the acts of congress on which they are based, are not binding."

12 C. J., Page 12, Sec. 10.

"A provision of the Securities Act of 1933, as amended, 15 U. S. C. A., Sec. 77 e (a), making it unlawful to make use of any means or instruments of transportation or communication in interstate commerce to sell, offer to buy, or deliver a security as to which a registration statement is not in effect is a valid exercise of congressional power."

15 C. J. S., Page 431, Sec. 88.

Sec. and Ex. Com. vs. Crude Oil, 93 Fed. 2nd. 844.

17 Fed. Supp. 164.

It will be noted that this decision deals with interstate commerce only. It in no way extends any jurisdictional rights over intrastate commerce.

In the Decree and Injunction bearing date of February 18th, 1946, occurs the following reservation:

"Provided that the foregoing shall not apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended."

Printed Record Page 7.

In the Order and Judgment pronounced in cause No. 1560, and from which this appeal is taken, the Court states:



“And the mails having been used in the sale and delivery after sale of such securities by the defendant Paul John Hunt since the entry of said decree on February 18, 1946, no registration statement being in effect with the Securities and Exchange Commission and no exemption from the provisions of Section 5 of the Securities Act of 1933, as amended, being available with respect to such securities.”

Printed record, Page 31

Original T. of R.. Page 31.

Originally, said Section 5 contained a sub-section 5 (c) which has been supplanted by Sec. 3 (a) (11). This supplanting Sec. reads as follows:

“Sec. 3 (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities: \* \* \* (11) Any security which is a part of an issue sold only to persons resident within a single State or Territory. Where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory.”

U. S. C. Title 15, Sec 77 (a) (11)

In construing the law applicable to said Sec. 5, the lower court failed to give the original sub-section (c) or the supplanting Sec. 3 (a) (11) any consideration whatsoever.

We respectfully maintain that since the injunctive order of February 18, 1946, was issued, "Any security" sold by Mr. Hunt is a *part of an issue* sold only to persons resident within a single State or Territory."

In other words, any security sold only to persons resident, etc., whether sold as one transaction or as a part of an *issue so sold* is entitled to exemption from the terms of the Securities Act of 1933.

To construe this sub-section to mean, that, "any security which is a *part of an issue* sold only to persons resident within a single State, etc., means that if *any other part of said issue* is sold to a non-resident it completely nullifies the exemption right so clearly provided in said sub-section and automatically gives the Federal Government complete jurisdiction of intrastate commerce; is clearly erroneous.

Respectfully submitted,  
LEWIE WILLIAMS,  
FRED'K. R. BURCH,  
*Attorneys for Appellant*

Address:  
608 Fourth and Cherry Bldg.,  
Seattle 4, Washington.

